

# **APPENDIX B**

## **PENALTIES AND APPEALS**

**California Health and Safety Code, Division 107 Statewide Health Planning and Development, Part 5 Health Data, Chapter 1 Health Facility Data.**

**Section 128770. Penalties; disposition.**

(a) Any health facility that does not file any report as required by this chapter with the office is liable for a civil penalty of one hundred dollars (\$100) a day for each day the filing of any report is delayed. No penalty shall be imposed if an extension is granted in accordance with the guidelines and procedures established by the office, with the advice of the commission.

(b) Any health facility that does not use an approved system of accounting pursuant to the provisions of this chapter for purposes of submitting financial and statistical reports as required by this chapter shall be liable for a civil penalty of not more than five thousand dollars (\$5,000).

(c) Civil penalties are to be assessed and recovered in a civil action brought in the name of the people of the State of California by the office. Assessment of a civil penalty may, at the request of any health facility, be reviewed on appeal, and the penalty may be reduced or waived for good cause.

(d) Any money which is received by the office pursuant to this section shall be paid into the General Fund.

(Added by Stats. 1995, c. 415 (S.B. 1360), § 9. Former 443.36, added by Stats. 1984, c. 1326, § 7.)

**TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 3. Required Reporting**

**Section 97045. Failure to File Required Reports.**

Any health facility which does not file with the Office any report completed as required by this Article or by Article 8 is liable for a civil penalty of one hundred dollars (\$100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Office for each day the filing of such report with the Office is delayed, considering all approved extensions of the due date as provided in Section 97051 or in Section 97214. Assessed penalties may be appealed pursuant to Section 97052. Within fifteen days after the date the reports are due, the Office shall notify the health facility of reports not yet received, the amount of liability, and potential future liability for failure to file said reports when due.

**TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 4. Modification, Extension, and Appeal Processes**

**Section 97050. Request for Modifications to Approved Accounting and Reporting Systems.**

(a) To obtain modifications to the uniform accounting and reporting systems specified by Sections 97017, 97018, and 97019, including modifications to the account coding structure, health facilities must file a written request for modifications with the Office. Health facilities must have an Office-approved modification prior to implementation of any change to the applicable uniform accounting system. Modification requests shall specify the precise changes being requested and the reason(s) the changes are needed. Requests from health facilities for modification to the applicable uniform accounting system, including requests to use an alternate coding scheme, shall be accompanied by (1) a cross reference between the facility's proposed account codes and titles, and the account codes and titles in the applicable accounting and reporting manual and (2) the facility's account definitions. The Office shall either approve or disapprove requests for modification within 60 days of the date the request was filed with the Office by the health facility, or the request shall be considered approved as submitted. However, if additional information is required from the health facility to evaluate the request, the Office shall have 30 days from the receipt of the additional information to approve or disapprove the request. The Office may also seek additional information from other appropriate sources to evaluate the request. Approved requests for systems modifications are subject to annual review and renewal by the Office.

(b) The Office shall grant modifications upon written application to licensed health facilities that are an integral part of a residential care complex to permit accounting and reporting for assets, liabilities, and equity for the entire residential care complex rather than require separate accounting and reporting for health care related assets, liabilities, and equity. Requests for modifications under this paragraph shall be submitted prior to the start of the accounting period to which the modifications are to apply and shall specify the proposed balance sheet account related modifications.

(c) The Office may grant modifications, upon written request, to licensees operating and maintaining more than one physical plant on separate premises under a single consolidated hospital license, issued pursuant to Health and Safety Code Section 1250.8, to file separate annual disclosure reports and quarterly financial and utilization reports for each location. The Office may also grant modifications, upon written request, to licensees of hospitals to file annual disclosure reports and quarterly financial and utilization reports for their mental health or rehabilitation care operations separately from the rest of the hospital operations. Licensees granted modifications under this paragraph shall be responsible for all regulatory requirements for each separate report. Separate extension requests, filed under the provisions of Section 97051, shall be required for each report, and penalties, assessed pursuant to Section 97045, shall be assessed on each delinquent report.

(d) In determining what modifications will be granted to health facilities under (a) or (c), the Office may take into account, but not be limited to the following factors:

(1) the data reported are comparable to data reported from other health facilities to the maximum extent feasible as determined by the Office;

(2) the report substantially complies with the purposes of the Health Data and Advisory Council Consolidation Act;

(3) the facility has considered and has a plan for the eventual or gradual implementation of the general accounting and reporting systems prescribed by the Office; and

(4) the burden on the health facility to report otherwise required data is sufficiently great that the cost to the health facility of preparing these data would outweigh the benefit to the people of the State of California.

Authority cited: Section 128810, Health and Safety Code. Reference: Section 128760, Health and Safety Code.

See Section 97240 of the California Code of Regulations (Appendix E).

## **Section 97051. Requests for Extension Time to File Required Reports.**

Any licensee of a health facility may file with the Office requests for reasonable extensions of time to file any or all of the reports required pursuant to subdivisions (a) through (e) of Section 128735, Section 128740, or Section 128755, Health and Safety Code. Licensees of health facilities are encouraged to file extension requests as soon as it is apparent that the required reports will not be completed for submission on or before their due date. The requests for extension shall be supported by justification which may provide good and sufficient cause for the approval of the extension requests. To provide the Office a basis to judge good and sufficient cause, the letter of justification shall include a factual statement indicating (1) the actions taken by the health facility to produce the disclosure reports by the required deadline, (2) those factors which prevent completion of the reports by the deadline, and (3) those actions and the time (days) needed to accommodate those factors.

The Office shall respond within 10 calendar days of receipt of the request by either granting what the Office determines to be a reasonable extension or disapproving the request. If disapproved, the Office shall set forth the basis for a denial in a notice sent by certified mail to the health facility. The Office may seek additional information from the requesting health facility. The Office may grant extensions but not to exceed an accumulated total, for all extensions and corrections, of 90 days for annual reports required by Section 97040 and 30 days for quarterly reports required by Health and Safety Code Section 128740. A health facility which wishes to contest any decision of the Office shall have the right to appeal in accordance with the provisions of Section 97052.

The civil penalty of one hundred dollars (\$100) a day, provided for in Section 97045, shall commence the day after the report due date notwithstanding the filing of a petition to review the Office's denial of a request for an extension of time in which to file required reports or the filing of a request for an extension of time in which to file required reports.

Authority cited: Section 128810, Health and Safety Code. Reference: Sections 128755 and 128770, Health and Safety Code.

1. Amendment filed 9-7-93; operative 10-6-93 (Register 93, No. 37)
2. Change without regulatory effect amending section and Note filed 10-31-2000 pursuant to Section 100, Title 1, California Code of Regulations (Register 2000, No. 44).

See Section 97241 of the California Code of Regulations (Appendix E).

### **Section 97052. Appeal Procedure.**

(a) Any health facility affected by any determination made under the Act by the Office may appeal the decision. This appeal shall be filed with the Office within 15 business days after the date the notice of the decision is received by the health facility and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing on an appeal shall, at the discretion of the Director, be held before any one of the following:

- (1) An employee of the Office appointed by the Director to act as hearing officer.
- (2) A hearing officer employed by the Office of Administrative Hearings.
- (3) A committee of the Commission chosen by the chairperson for this purpose.

Authority: Section 128810, Health and Safety Code.

Reference: Section 128775, Health and Safety Code.

### **Section 97053. Conduct of Hearing.**

(a) The hearing, when conducted by an employee of the Office appointed by the Director to serve as hearing officer or by a committee of the Commission, shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) When the hearing is conducted by an employee of the Office or by a committee of the Commission, the hearing shall be recorded by a tape recording, unless the appellant agrees to provide a certified shorthand reporter at the appellant's expense. If the appellant provides a certified shorthand reporter, the original of the transcript shall be provided directly to the Office.

(c) A copy of the tape recording or of the transcript, if made, shall be available to any person so requesting who has deposited with the Office an amount of money which the Director has determined to be sufficient to cover the costs of the copy of the tape recording or transcript.

Authority: Section 128810, Health and Safety Code.

Reference: Section 128775, Health and Safety Code.

**Section 97054. Decision on Appeal.**

(a) The employee, hearing officer, or committee shall prepare a recommended decision which includes findings of fact and conclusions of law.

(b) This proposed decision shall be presented to the Office for its consideration.

(c) The Office may adopt the proposed decision, or reject it and decide the matter as described in paragraph 1 below.

(1) If the Office does not adopt the proposed decision as presented, it will furnish a Notice of Rejection of Proposed Decision along with a copy of the proposed decision to appellant and, if applicable, appellant's authorized representative. The Office will provide appellant the opportunity to present written arguments to the Office. The decision of the Office will be based on the record, including the hearing record, and such additional information as is provided by the appellant.

(d) The decision of the Office shall be in writing. It shall be made within 60 calendar days after the conclusion of the hearing and shall be final.

Authority: Section 128810, Health and Safety Code

Reference: Section 128775, Health and Safety Code

**DISCUSSION:**

See attached Appeals Process for Civil Penalties.

## APPEAL DOCUMENTS

If you choose to submit an appeal, complete the following and return to:

Office of Statewide Health Planning and Development  
Patient Data Section  
818 K Street, Room 100  
Sacramento, CA 95814  
(916) 323-7679  
Fax (916) 327-1262

Effective 01/01/05

**OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

**APPEALS PROCESS FOR CIVIL PENALTIES  
ASSESSED PURSUANT TO  
THE HEALTH DATA AND ADVISORY COUNCIL CONSOLIDATION ACT**

**RIGHT TO APPEAL**

Any health facility that has been assessed a penalty pursuant to Health and Safety Code Section 128770 may petition the Office for review of the penalty assessment. An appeal must be filed within fifteen (15) business days of the day the facility receives notification of the penalty assessment. The right to appeal is forfeited if an appeal is not either received by the Office or postmarked within fifteen (15) business days of notification of any action or decision. If an appeal is submitted, the facility is entitled to a formal administrative hearing within sixty (60) days.

**HOW TO APPEAL**

The Office provides a form that may be used to file an appeal. Use of this form is not mandatory, but any appeal must be in writing and must include all necessary information. An appeal must be signed by the licensee or administrator, unless they choose someone else to represent the hospital.

If the licensee or administrator chooses someone else to represent the facility in its appeal, the Office must be notified in writing of that delegation of authority. (A form for this purpose accompanies the appeal form.) The licensee or administrator should be aware that they will be bound by the statements and actions of an authorized representative.

**INFORMAL PROCEDURE**

For the convenience of health facilities filing appeals, the Office has established an informal appeal process. The informal procedure does not require the facility to actually attend a hearing. Review of the appeal is based on written materials submitted by the facility as well as the Office's records. If a facility elects to use the informal procedure, it still has the right to request a formal hearing if it is not satisfied with the informal decision. However, in order for a facility to take advantage of the informal procedure, it must waive its right to have a formal hearing held within sixty (60) days.

The informal procedure works as follows:

1. The facility files an appeal, requests an informal review, states the grounds for the appeal and agrees to waive the sixty (60) day limit.
2. The Chief Counsel for the Office reviews the appeal, makes a decision and notifies the facility.
3. The facility has fifteen (15) business days from the date it receives the written decision in the mail to either accept it or to reject it and request a formal hearing.
4. If a formal hearing is requested, one is scheduled.

### FORMAL HEARING

Appeals are heard by the three-member Appeals Committee of the California Health Policy and Data Advisory Commission. Formal hearings are conducted substantially in conformity with the California Administrative Procedure Act. The facility may be represented by an attorney, but this is not required. The hearing will be tape recorded. The facility may, at its expense, supply a court reporter.

The Appeals Committee will consider any relevant evidence offered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Appeals Committee will prepare a recommended decision, including findings of fact and conclusions of law, and present it to the Office. The decision of the Office will be made in writing within sixty (60) days of the conclusion of the hearing. It will be the final administrative decision.

References: Health and Safety Code Sections 128770 and 128775 and Title 22, California Code of Regulations, Section 97052, 97053 and 97054.

**PETITION TO THE  
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Facility Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ OSHPD Identification No. \_\_\_\_\_

Authorized Representative (if any) \_\_\_\_\_

Address \_\_\_\_\_

Street

City

State

Zip Code

Telephone \_\_\_\_\_

**Petitioner appeals the decision of the Office of Statewide Health Planning and Development dated \_\_\_\_\_.**

**Check one**

- Petitioner wishes to use the Office's informal procedure.  
We waive our right to a formal hearing within 60 days.
  
- Petitioner does not wish to use the informal procedure and requests a formal hearing within 60 days.

**This appeal is based on the following grounds:** (Attach additional pages as necessary.)

Name\* \_\_\_\_\_ Title \_\_\_\_\_

Please Print

Please Print

Signature \_\_\_\_\_ Date \_\_\_\_\_

Attachment(s)      Yes      No

\*Representatives other than the facility administrator or licensee must have written authorization from the facility administrator or licensee, a copy of which must be attached to this form.

Effective 01/01/05

**AUTHORIZATION TO REPRESENT**

**FACILITY IN APPEAL**

\_\_\_\_\_ is hereby authorized to represent  
*(Name of Authorized Representative)*

\_\_\_\_\_  
*Name of Facility*

before the Office of Statewide Health Planning and Development. This authorization extends to all communications between our representative and the Office, its staff, or the Appeals Committee of the California Health Policy and Data Advisory Commission, concerning this appeal. This authorization may be terminated at any time upon written notice to the Office.

\_\_\_\_\_  
*Facility Administrator or Licensee Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*